

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:08CR210
)	
vs.)	ORDER
)	
TERRY BAIN,)	
)	
Defendant.)	

This matter is before the court on defendant Terry Bain's (Bain) motion to disclose grand jury material (Filing No. 62). Bain alleges he needs the material to determine if a motion to dismiss the Indictment on the basis of grand jury bias should be filed. Bain has been provided a copy of a grand jury transcript wherein the following colloquy occurred during the testimony of a witness:

Q. (Mr. Mayer) May I stop you for a second there.

Mr. Mayer: And just comes to mind just before the grand jury – to my attention that gentlemen, a member of the grand jury, may be family with Mr. Bain. We went through that kind of explanation yesterday. I think what I need to do again is repeat that same process. We'll leave the grand jury and you can discuss amongst yourselves what you think is appropriate. Again as your legal advisor, the fact that you know someone doesn't necessarily make you ineligible. It has to do whether you have the ability – you can be fair and impartial, not only to your colleague grand jurors, but also to Mr. Bain in your determination to sit here and basically be judgment, so to speak. So we're going to just leave the grand jury room, talk amongst yourselves. And then we'll just ring us, we'll come back in.

(A recess was taken.)

Mr. Mayer: For the record, we're back in the presence of the grand jury. Are we product to proceed Mr. Foreperson?

Mr. Foreperson: Yes.

Mr. Mayer: Do we have a quorum, sir?

Mr. Foreperson: Yes.

Filing No. 62-2, pp. 3-4.

The government's response (Filing No. 68-Sealed) did not include how or what the grand juror told Mr. Mayer regarding the relationship to Bain nor did the response include the instructions to the grand jury indicated by Mr. Mayer's comment on page 2, line 20, of the excerpt from grand jury testimony attached to the government's response: "We went through that kind of explanation yesterday." **See** Filing No. 62-2.

IT IS ORDERED:

The government shall file under seal a transcript of instructions or advice provided to the grand jury regarding the above colloquy **on or before January 21, 2009**.

DATED this 15th day of January, 2009.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge